

EXECUTIVE SECRETARIAT

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Executive Secretary

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

November 13, 1985

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: James E. ~~Walter~~ III
Director

SUBJECT: Actions You Must Take in the Event of an
Appropriations and/or Debt Ceiling Hiatus This
Week

Unless the Congress of the United States takes appropriate action to resolve appropriations and debt ceiling problems by November 14, 1985, the United States Government will be faced with one of three extraordinary situations requiring your immediate and undivided attention. Among these possibilities is the prospect that the government will default on financial obligations because of this impasse. This memorandum is being issued to provide instructions on how to meet those situations should one of them occur.

Specific action may be required of you on next Friday morning (November 15th) if:

- (1) the statutory debt ceiling has been raised, but no continuing resolution or appropriations bill for your agency has been enacted (only two out of thirteen appropriations bills have been sent to the President thus far); or
- (2) a continuing resolution or appropriations bill for your agency has been enacted, but Congress has not acted to raise the current debt ceiling; or
- (3) neither a continuing resolution nor appropriations for your agency has been enacted, nor has Congress acted to raise the current debt ceiling.

At the present time, there are bills pending before Congress to resolve both the appropriation/continuing resolution and debt ceiling problems. However, Congress has faced these problems since early October and thus far has been unable to agree on solutions. Thus, we have concluded very reluctantly that it is necessary to inform you of the steps you must take should Congress fail to take necessary action.



The steps required for each of these situations are summarized below.

I. Congress Has Not Enacted a Continuing Resolution or Appropriations Act for Your Agency, But Has Enacted an Increase in the Debt Ceiling

This situation would present what the Government has experienced before and require initiation of the "shut-down" procedures pursuant to plans previously prepared and described in OMB memoranda dated August 28, 1980 and November 17, 1981, copies of which are attached. These plans should be implemented as of the opening of business on November 15th. In particular, your employees should be instructed to report for work on that morning to complete shut-down activities. Any questions regarding these instructions should be directed to your OMB budget examiner.

II. Congress Has Enacted a Continuing Resolution or Appropriations Act for Your Agency, But Has Not Enacted an Increase in the Debt Ceiling

As you may know, the law (31 U.S.C. 3101, as amended) establishes the maximum amount the Federal Government may borrow to discharge its obligations. (The current ceiling is \$1,823.8 billion.) The Secretary of the Treasury has concluded that unless Congress enacts a new, higher limit by Thursday, November 14, 1985, the United States Government will not have the cash available to meet its payment obligations, including interest payments due on the public debt. In the absence of Congressional action to raise the debt ceiling, and assuming that an acceptable continuing resolution or appropriations bill for your agency has been approved, you should continue to operate lawfully and to incur obligations. However, a cash-flow crisis will occur when expenditures are presented to the Federal Reserve Banks for payment.

There is no precedent in our history for such a situation. It is all but unthinkable because of the attendant impact in our international interests, our economy, and the pain and suffering that would ensue. Yet, the prospect is real, and we must prepare for it.

For several days, alternatives have been reviewed by the President and his advisors. After careful consideration, and notwithstanding the dilemma created by Congressional inaction, the available alternatives have been rejected as completely unacceptable -- including, but not limited to the sale of the Federal gold reserve and disinvestment of the Federal trust funds to raise cash rather than to pay benefits.

The policies that apply to all agencies are as follows:

1. Payments. You should delay payments to vendors for

goods and services rendered or progress payments due. You should also delay payments to beneficiaries. This payment freeze applies equally to defense and civilian accounts. Your agency should process checks or other forms of payment in the usual fashion, but no employee (including disbursing officers) should mail the checks or otherwise make payments in any form -- including, but not limited to, wire transfer instructions -- until a debt ceiling measure has been enacted. Furthermore, beginning November 15, 1985, you should not certify any vouchers for payment to the Treasury or Federal disbursing offices. This, of course, means that no government payroll checks may be issued on November 15th.

2. Grants. Similarly, you should delay further payments to organizations and institutions under grant agreements -- including State and local governments, and non-profit institutions.

3. New contracts. Unless necessary to continue services to protect life and property or provide for the national security (including the conduct of foreign relations essential to the national security), your agency should not enter into any new contracts until a debt ceiling measure has been enacted. In determining the character of any proposed activity or contract, you should refer to your contingency plans covering an appropriations hiatus to decide which programs are considered necessary to protect life and property. Where the answer is not clear, no new obligation should be assumed unless approved by OMB or until the situation has been resolved by enactment of a new debt ceiling.

4. Hiring. Your agency must not hire any new personnel until a debt ceiling measure has been enacted.

5. Instructions to current employees. Notwithstanding the failure of Congress to adopt a debt ceiling measure, the public expects that its government will continue to function. As noted previously, you should continue operations. Thus, you should tell your employees they are expected to continue to report for work each day in the ordinary fashion, but a liberal policy may be adopted for granting annual leave to persons not deemed to be performing essential functions.

6. Lawsuits. If you or your agency are sued as a result of the actions taken pursuant to the President's action or because of the non-payment of checks outstanding, you should immediately notify the Department of Justice c/o Dennis Lindner, Civil Division (telephone: 202-633-3314 or 3301).

7. Further guidance and questions. As noted by earlier communication, you or your representative are invited to a meeting to be held today at 10:00 A.M. in Room 450 of the Old

Executive Office Building for the purpose of providing further instructions on what you should do during the debt ceiling impasse and to answer any questions you may have.

III. Congress Has Not Enacted a Continuing Resolution or Appropriations Act for Your Agency, Nor Has It Enacted an Increase in the Debt Ceiling

In this most unusual situation, where Congress fails to enact appropriations legislation and fails to raise the debt ceiling, you must follow the procedures listed in both Sections I and II of this memorandum. In other words, you must not make any unnecessary financial commitments on behalf of your agency, and you must begin the orderly closing down of your agency's operations. More specific instructions will be provided in writing and at the meeting mentioned above.

Within the guidance established by this memorandum, you should make determinations that are necessary to operate your agency during an appropriations and debt ceiling hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Again, questions that cannot be determined by your agency should be addressed to your OMB budget examiner. All unresolved questions relating to the construction of the Antideficiency Act should be referred to the Office of Legal Counsel at the Department of Justice.

I thank you for your cooperation in preparing for an event we all hope and pray will be avoided.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
 WASHINGTON, D.C. 20503

November 17, 1981

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: David A. Stockman *DAS*

SUBJECT: Agency Operations in the Absence of Appropriations

Public Law 97-51, the Continuing Resolution enacted by the Congress on September 30, 1981 to provide for appropriations for all Executive and Judicial branch accounts, will expire on midnight Friday, November 20. No regular appropriations bills for Fiscal Year 1982 have been submitted to the President during the period of the Continuing Resolution, and the House of Representatives and Senate are presently considering widely divergent Second Continuing Resolutions. There is, therefore, a possibility that no appropriations will be enacted as of November 21.

Under the circumstances, you should begin orderly planning to deal with this possibility.

CMB Bulletin 80-14, dated August 28, 1980, requires all agencies to maintain contingency plans to deal with the eventuality of an appropriations hiatus. Additionally, the opinion of the Attorney General dated January 16, 1981, attached, remains in effect.

Examples of excepted activities were developed when the Executive Branch last faced the possibility of an appropriations hiatus, and were sent to agencies by former CMB Director James McIntyre on September 30, 1980. They are:

Beginning [November 21, 1981], agencies may continue activities otherwise authorized by law, those that protect life and property and those necessary to begin phasedown of other activities. Primary examples of activities agencies may continue are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
 - a. Medical care of inpatients and emergency outpatient care;

- b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
- c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
- d. Border and coastal protection and surveillance;
- e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
- f. Care of prisoners and other persons in the custody of the United States;
- g. Law enforcement and criminal investigations;
- h. Emergency and disaster assistance;
- i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;
- j. Activities that ensure production of power and maintenance of the power distribution system; and
- k. Activities necessary to maintain protection of research property.

You should maintain the staff and support services necessary to continue these essential functions.

In addition, the following policies will be in effect in the event of a November 21 appropriations hiatus:

1. All employees performing non-excepted activities defined by this memorandum and by the Attorney General's opinion of January 16, 1981, are permitted to perform no services other than those involved in the orderly suspension of agency operations.
2. With regard to non-excepted agency activities and agency personnel performing them, particular attention should be paid to those provisions of the Antideficiency Act that do not permit agency acceptance of voluntary, i.e. non-excepted services. Accordingly, in the event that the appropriations hiatus continues measurably beyond Monday, November 23, 1981, agency heads will be required to make determinations as to whether non-excepted personnel have completed all phasedown tasks incident to the orderly suspension of agency operations. At such time, the services of those employees can no longer be accepted in the absence of appropriations.

3. This memorandum is principally directed towards the ability of agencies to obligate funds in the absence of appropriations. It should be made clear that, during a appropriations hiatus, funds may not be available to permit agency payment of obligations. All personnel performing excepted services, including activities incident to the orderly suspension of agency operations, should be assured that the United States will not contest its legal obligation to make payment for such services, even in the absence of appropriations.

4. Agencies are requested to report promptly to OMB staff who normally handle their budgets any major disruptions of activities or services that may or will imminently result from the absence of appropriations.

5. Within the guidance established by the Attorney General's opinion of January 16, 1981, and this memorandum, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by an agency should be addressed to OMB. All unresolved questions relative to the construction of the Antideficiency Act will be jointly referred to the Office of Legal Counsel of the Department of Justice.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Bulletin No. 80-14

August 28, 1980

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations

1. Purpose and Coverage. This Bulletin provides policy guidance and instructions for actions to be taken by Executive Branch agencies when failure by the Congress to enact either regular appropriations, a continuing resolution, or needed supplementals results in interruption of fund availability. This Bulletin does not apply to specific appropriations action by the Congress to deny program funding. In the instance of partial funding interruptions, e.g., failure of the Congress to act on program supplementals, special procedures beyond those outlined in this Bulletin may be warranted. In such cases, OMB representatives responsible for the affected agency's budget estimates should be consulted.

2. Background. The Attorney General issued an opinion on April 25, 1980 that the language and legislative history of the Antideficiency Act (31 USC 665) unambiguously prohibits agency officials from incurring obligations in the absence of appropriations. The essential elements of the Attorney General's advice are that:

a. In the absence of new appropriations, Federal officers may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.

b. Under authority of the Antideficiency Act, Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but no funds may be disbursed.

c. Under its enforcement responsibilities, the Department of Justice will take actions to apply the criminal provisions of the Antideficiency Act in the future when violations of the Act are alleged under such circumstances.

3. Actions required. Agencies faced with funding interruptions must take steps to forestall interruptions in operations and assure that they are in a position to limit their activities to those directly related to orderly shutdown of the agency.

a. Reallocation of funds prior to shutdown. Prior to initiation of orderly shutdown activities, agency heads will limit their operations to minimum essential activities and will reallocate to the extent permitted by law all available funds in order to forestall the fund interruption date as long as possible. Reallocation of funds will be made subject to the following requirements:

(1) Reallocation below the appropriation and fund account level will be accomplished by telephonic revision to allotments and suballotments (such revisions will be documented and immediately reflected in formal written changes to the regular allotment/suballotment documents).

(2) Agencies that have specific statutory authority to reallocate and transfer funds between appropriation and/or fund accounts will effect the transfers in accordance with current standard fiscal procedures. Such transfers generally will be effected on Standard Form (SF) 1151, "Nonexpenditure Transfer of Funds" (see OMB Circular No. A-11, section 21.2, for a description of when expenditure transfers might be required). This Bulletin does not convey new authority to transfer funds.

(3) For this purpose adjustment to amounts contained in OMB apportionments may be made without submission of a reapportionment request.

b. Orderly shutdown activities. When all available funds, including reallocated/reallocated funds, are exhausted, orderly shutdown activities must begin. Each agency head must determine the specific actions that will be taken; however, all actions must contribute to orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Such actions should be accomplished in a way that will facilitate reactivation when funds are made available. Agency heads will notify OMB, OPM, Treasury, and GSA immediately when shutdown activities are being initiated. These central agencies will be responsible for notifying their own regional offices, except as noted in paragraph (3).

(1) Appropriations and funds. Agency heads will limit obligations incurred to those needed to maintain the minimum level of essential activities necessary to protect life and property; to process the necessary personnel actions; to process the personnel payroll for the periods prior to fund interruption; and to provide for orderly transfer of custody of property and records to the General Services Administration (GSA) and the Office of Personnel Management (OPM) for disposition.

(2) Personnel and personnel records. Necessary personnel actions will be taken to release employees in accordance with applicable law and Office of Personnel Management's regulations. Preparation of employee notices of furlough and processing of personnel and pay records in connection with furlough actions are essential shutdown activities. Agencies should plan for these functions to be performed by employees who are retained for orderly termination of agency activities, as long as those employees are available. As soon as agencies determine the date after which they will no longer be able to maintain custody of personnel records, they should notify the Office of Personnel Management to arrange for orderly transfer of custody of the personnel records to OPM and GSA, jointly, for caretaking and protection of the records. If necessary to protect the interests of individual employees during the period when all employees of the agencies are on furlough, OPM will provide access to the appropriate personnel records to retrieve information and/or process personnel actions, e.g., separation-transfer of an employee who secures employment in another agency. Guidance for planning such actions and relevant questions and answers as to employees' benefits will be provided separately by OPM.

(3) Property and nonpersonnel records. Inventories of property and records will be made to assure protection of the Government's interests and the claims of affected private entities and individuals (including vendors and beneficiaries of Federal programs). Upon determination that agency funds are no longer available, agency officials should contact the appropriate Regional Administrators, General Services Administration, for assistance in determining the disposition of agency records, real and personal property, and outstanding requisitions, contracts, grants and related items. Detailed guidance on such matters are contained in:

- 41 CFR 101-11.4; Dispositions of records.
- 41 CFR 101-43 and 101-47; Disposition of personal property and real property.

- FPMR 101-36.5, 101-37.203(c), and 101-37.307-1; Dispositions of automatic data processing, communications, and telephone equipment.
- GSA motor pool accounting and record system operations guide; Disposition of motor vehicles.

The transfer to the General Services Administration of property and records shall not be made until 30 days have elapsed from the start of shutdown activities and then only after a determination is made that the funding hiatus will continue indefinitely.

c. Planning. Agency heads should develop plans for an orderly shutdown that reflect the policy and guidance provided in this Bulletin. Such plans necessarily will be tailored to each agency's needs in recognition of the unique nature of its funding sources, missions, and authorities. While every agency should have a plan, the scope and detail of the plan should be commensurate with the likelihood that shutdown will be necessary and with the complexity of shutting down the agency.

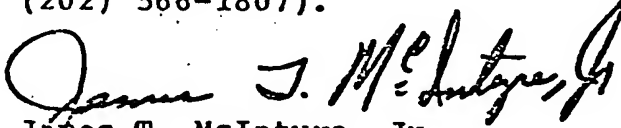
4. Effective dates. The instructions in this Bulletin are effective immediately and remain in effect until rescinded.

5. Inquiries. Budgetary questions should be directed to the OMB representatives responsible for review of each agency's budget estimates.

Fiscal procedures questions should be directed to the Division of Government Accounts and Reports, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex #1, Washington, D.C. 20226 (Telephone: (202) 566-5844).

Agency officials may obtain additional information and technical assistance on personnel matters by contacting their agency officer at the Office of Personnel Management.

Property and nonpersonnel records disposition questions should be directed to Office of Plans, Programs, and Financial Management, General Services Administration, Washington, D.C. (Telephone: (202) 566-1807).


James T. McIntyre, Jr.
Director